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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,582	07/01/2002	Lars Riis Damgaard	0702-1216	4865

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EXAMINER

NASSER, ROBERT L

ART UNIT PAPER NUMBER

3735

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,582

Applicant(s)

DAMGAARD ET AL.

Examiner

Robert L. Nasser

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7,9-11,13-16 and 27-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7, 9-11, 14-16, 30,32-40 is/are allowed.
- 6) ☒ Claim(s) 13, 27, 28, 29 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The examiner regrets that claim 11 was inadvertently listed as being allowable, but claim 12 was actually intended. Accordingly, the following action is being made non-final.

Claims 9-11 are objected to in that they depend on claim 8, but claim 8 has been canceled.

Claims 13 and 28 is objected to because there is no antecedent basis for the large surface or longitudinal axis. In addition, it is unclear what relationship the panel or disc has with the barrier of claims 7 and 27.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 13 and 28 and 31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. This claim recites that the chamber is located between the disk and the skin or organ. The human body is non-statutory subject matter and cannot be positively recited. Applicant should amend the claim to recite that the chamber is adapted to be between

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-29, are rejected under 35 U.S.C. 102(e) as being anticipated by Revsbech et al 6234004. Revsbech shows a device having a first spatial elongated area 2 connected to a reservoir for supplying a tracer gas to the blood, which tracer diffuses through membrane 8 into the blood and back into a spatially elongated second area through the membrane into detection chamber 1. The first area is formed by the top surface of element 8 and the detection cavity 1 and the second area is formed by the interior surface of element 8. The elements are separated by a barrier 8 or 4 and combine to form a longitudinal sensor. Claim 29 is rejected in that each of the reservoir 2, the chamber 1 and the barrier 4 are side by side with respect to the other elements. Claims 7, 9-11, 14-16, 30, 32-40 are allowable.

Claim 13 would be allowable if the 101 rejection were overcome.

These claims define over the art in that none of the art has the mutually interspaced chambers.

Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 36 defines over the art in that none of the art has the vacuum source connected to a plurality of channels, as claimed.

Applicant's arguments filed 6/5/2006 have been fully considered but they are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RLN
August 21, 2006

Robert L. Nasser
Primary Examiner
Art Unit 3735



ROBERT L. NASSER
PRIMARY EXAMINER